

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.* W.A. DREW  
EDMONDSON, in his capacity as ATTORNEY  
GENERAL OF THE STATE OF OKLAHOMA,  
*et al.*

Plaintiffs

vs.

TYSON FOODS, INC., *et al.*

Defendants

05-CV-00329-GKF-SAJ

CAL-MAINE FOODS, INC.'S COMBINED  
MOTION TO COMPEL DISCOVERY RESPONSES  
FROM THE PLAINTIFF, AND BRIEF IN SUPPORT OF MOTION

Cal-Maine Foods, Inc. ("Cal-Maine"), moves this Court, pursuant to Fed.R.Civ.P.  
37(a), to enter its order compelling the plaintiff to fully respond to certain discovery  
previously propounded herein to it, and in support shows the following:

I. Motion To Compel

1. On March 20, 2007, Cal-Maine propounded combined interrogatories and  
production requests to the plaintiff. A copy of the March 20 discovery is attached as exhibit  
"A".
2. The plaintiff responded on separate dates to different parts of the March 20  
discovery. The first partial response was made on April 30, 2007. The second was made on  
May 18, 2007. These responses are attached respectively as exhibits "B" and "C".
3. The plaintiff's responses to interrogatories 1, 2, 7, 8, and 9, and production  
requests 1, 2, 5, 6, and 7 were deficient. On June 1, 2007, Cal-Maine sent the plaintiff a letter

outlining the deficiencies and requesting that the plaintiff supplement its deficient responses. The plaintiff did not respond to the letter. A copy of the letter is attached as exhibit “D”.

4. On June 27, 2007, Cal-Maine conferred telephonically with the plaintiff regarding the deficiencies in the plaintiff’s discovery responses. The plaintiff refused to supplement or alter its deficient responses.

5. Interrogatories 1 and 2 are similar. Interrogatory 1 asks simply whether the plaintiff contends that any of sixteen identified former Cal-Maine independent contract growers violated any Oklahoma or Arkansas statute or regulation by improperly storing or applying litter. Interrogatory 2 asks the same question with regard to Cal-Maine itself. The plaintiff inexplicably asserted objections based on attorney client privilege, work product, and consulting expert privilege. The plaintiff then directed Cal-Maine to 19,324 pages of records it had previously produced in response to discovery from other defendants without stating whether evidence of any such violations by Cal-Maine or the sixteen identified former Cal-Maine independent contract growers might or might not be contained in those 19,324 pages. The plaintiff wrongfully refused to answer whether or not it contends that the sixteen growers and/or Cal-Maine, itself, violated any specific statutes or regulations. The plaintiff’s reference to 19,324 pages of documents is plainly a calculated attempt to avoid giving a proper response to the interrogatories. The plaintiff’s objections are not sustainable. The plaintiff should be compelled to give proper responses.

6. Interrogatory 7 asks whether the State of Arkansas has ever failed in any respect to fulfill any obligation it had, or which was imposed upon it, under the authority of the Arkansas River Basin Compact or The Arkansas River Compact Commission. The interrogatory is relevant to at least three of the defenses Cal-Maine asserted in its Answer to the First Amended Complaint (“FAC”). The fourth defense raises the plaintiff’s failure to

join a necessary party; the seventh defense asserts that the FAC is barred by the provisions of the Compact; and, the eighteenth defense raises the defense of primary jurisdiction. The plaintiff refused to answer the interrogatory and objected that the interrogatory was overly broad, unduly burdensome, and “not relevant to any claim or defense in this litigation.” The objections are not sustainable. The plaintiff should be compelled to give a proper response.

7. Interrogatories 8 and 9 are similar. They ask whether the plaintiff made any pre-Complaint estimate, assessment, or quantification of potential adverse social or financial consequences to family farmers (interrogatory 8) or adverse consequences to the economies of Oklahoma or Arkansas (interrogatory 9) if the plaintiff is successful in this action. These interrogatories are clearly relevant to the balancing of the equities which must be made in evaluating the plaintiff’s demand for injunctive relief contained in the FAC. The plaintiff stated the objection that the interrogatories were vague, ambiguous, and not relevant. It refused to answer the interrogatories. The objections are not sustainable. The plaintiff should be compelled to give proper responses.

8. Production requests 1, 2, 5, 6, and 7 sought production of documents which reflect the answers which were anticipated in, respectively, interrogatories 1, 2, 7, 8, and 9. In response to these production requests, the plaintiff merely referred to its responses to those interrogatories. For production requests 7, 8, and 9, which correspond to interrogatories 5, 6, and 7, the plaintiff reiterated its objections and produced nothing. For production requests 1 and 2, which correspond to interrogatories 1 and 2, the plaintiff stated that it would soon produce more documents from the Oklahoma Department of Agriculture, Food and Forestry (“ODAFF”). The new production from ODAFF has now occurred. The plaintiff did not identify any materials which were specifically responsive to Cal-Maine’s discrete production requests.

9. The discovery “responses” which are the subject of this motion are evasive and incomplete. Cal-Maine moves this Court its order compelling the plaintiff to fully and candidly respond to the discovery. Pursuant to Fed.R.Civ.P. 37(a)(4)(A), Cal-Maine further moves this Court to grant Cal-Maine its reasonable expenses and attorneys’ fees incurred in prosecuting this motion.

## II. Brief In Support of Motion

### A. The Plaintiff’s Duty To Respond To Discovery

The law regarding the duty of a party to respond to discovery in this action has been briefed thoroughly by other parties in previous discovery disputes. Rather than plow this ground again, Cal-Maine will rely on authority cited in previous motions to compel.

The plaintiff is under a clear duty to answer interrogatories with responsive information. *See, Herdlein techs v. Century Contractors*, 147 F.R.D. 103, 108 (W.D.N.C. 1993). Interrogatory responses must be complete and not evasive. *See, Truck Treads, Inc. v. Armstrong Rubber Co.*, 818 F.2d 427, 429 (5<sup>th</sup> Cir. 1987). “[P]arties must provide true, explicit, responsive, complete and candid answers to interrogatories . . .” *Hansel v. Shell Oil Corp.*, 169 F.R.D. 303, 305 (E.D. Pa. 1996).

“Where the party resisting discovery has responded by objecting . . . or has served responses that the party seeking discovery considers to be evasive or incomplete, the proper remedy is to move for an order compelling answers (or production) under Rule 37(a)” *J.M. Clemmishaw Co. v. City of Norwich*, 93 F.R.D. 338, 345 (D. Conn. 1981). “For purposes of a motion for order compelling discovery, an evasive or incomplete answer is treated as a failure to answer.” *Rickles v. Inc. v. Frances Denney Corp.*, 508 F.Supp. 4, 7 (D. Mass. 1981).

B. The Plaintiff's Responses Are Deficient

i. Interrogatories 1 and 2 and Production Requests 1 and 2

Interrogatories 1 and 2 ask the plaintiff simply to specify the who, where, when, and how regarding the plaintiff's allegations that Cal-Maine's former independent contract growers (interrogatory 1) and Cal-Maine itself (interrogatory 2) violated Oklahoma and Arkansas law applicable to storing and spreading litter. Rather than answer the interrogatory directly, or admit directly that it has no proof of such alleged violations, the plaintiff objected and stated that it will not, in any event, be relying on statutory violations to prove its case.

The objections specific to interrogatories 1 and 2 were based on claims of attorney-client privilege, work product protection, and expert consultant privilege. None of these objections is sustainable. The plaintiff did not attempt to explain how state government records, if any, showing violations of law by Cal-Maine or any of its former independent contract growers can possibly fall under the attorney-client privilege, the work product doctrine, or any expert consultant privilege. Such records, if any, are simply historical notations of events. If any of Cal-Maine's former independent contract growers were cited for any breach of Oklahoma or Arkansas law, it stands to reason that that grower would have been notified of the allegation of such a breach. That notification would prevent the privileges cited in the objections from arising in the first instance. These objections are frivolous.

In its FAC the plaintiff has alleged that Cal-Maine and its former independent contract growers have violated Oklahoma law, and it seeks damages from Cal-Maine on that basis. (FAC, Counts 7 - 9, ¶¶ 128 - 139) Those allegations were carried forward in the Second Amended Complaint ("SAC") (SAC, Counts 7 - 9, ¶¶ 127 - 138) Cal-Maine has, of course, denied those allegations and joined the issues on those points. The plaintiff's present

argument that it will not rely on proof of statutory violations to prove liability and damages is contradicted by the FAC. Even if the plaintiff were to drop its claims relating to alleged statutory violations, Cal-Maine will rely, in part, on the absence of violations of state law to establish that it has no liability herein on any of the counts of the FAC. In Cal-Maine's Answer to the FAC, its Twenty Sixth Defense set out the defense that the manure from its chickens was used in a legal manner. Its Seventeenth Defense and its Thirty Eighth Defense, respectively, also set out the defenses of claim preclusion and claim pre-emption on the basis of Oklahoma's statutory and regulatory construct regarding animal feeding operations. Even if evidence of violations, or the lack of violations, on the part of Cal-Maine or its former independent contract growers were not relevant to the plaintiff's claims, such evidence is clearly relevant to Cal-Maine's defenses. The plaintiff's assertion that it will not rely on evidence of statutory or regulatory violations in its proof is meaningless in the context of this discovery and this dispute about this discovery.

The plaintiff also directed Cal-Maine to 19,324 pages of grower files which were almost entirely non-responsive. Within those 19,324 pages, Cal-Maine could find reference to only one of its identified sixteen former independent contract growers.<sup>1</sup> The plaintiff has made the allegation that Cal-Maine and its former independent contract growers violated Oklahoma law regarding animal feeding operations. (FAC, Counts 7 - 9, ¶¶128 - 139 -- SAC, Counts 7 - 9, ¶¶127 - 138) To the extent that allegation is not a reckless allegation without any basis in fact, the plaintiff presumably has proof to support the allegation. The plaintiff

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<sup>1</sup> Lois Hampton, a 72 year old former Cal-Maine independent contract grower, is alleged to have failed to take the three hours of annual training required for poultry growers for the years 1997 and 1998, and in 2002 she is alleged to have applied too much litter on one of her fields. The size of the field and the amount of the alleged litter involved are not shown. The referenced records do not show that any administrative remedy was sought or imposed against her. It appears that she was merely informed that the alleged infractions were noted.

should respond fully to interrogatories 1 and 2, and reveal the factual basis, if any, for those allegations.

If the plaintiff has no factual basis for alleging violations of Oklahoma or Arkansas law by Cal-Maine or its former independent contract growers, it should say so plainly. It has demonstrated that it will not do so voluntarily. This Court should compel the plaintiff to answer those interrogatories and reveal the factual basis for the allegations made in the FAC or answer plainly that it has no knowledge of any alleged statutory infractions by Cal-Maine or its former independent contract growers other than the minor alleged infraction by one former independent contract grower noted above.

Production Requests 1 and 2 ask the plaintiff to produce documents it has which reflect any violations of Oklahoma or Arkansas law by Cal-Maine or any of its sixteen identified former independent contract growers. As noted, the plaintiff pointed to the 19,324 pages it had previously produced from ODAFF. It also stated that it would produce other documents from ODAFF. Regarding the first 19,324 pages produced by the plaintiff, the proper response to the production request would have been to produce those documents which related to the one former independent contract grower for Cal-Maine. The plaintiff should have answered that it had no documents relating to Cal-Maine or the other fifteen growers. The most recent document production from ODAFF has just occurred. It is not known yet whether any of those documents will prove responsive to Cal-Maine's production request, but Cal-Maine has received nothing from the plaintiff indicating that responsive records exist within the materials recently produced.

ii. Interrogatory 7 and Production Request 5

Interrogatory 7 asks simply whether Oklahoma believes that Arkansas has ever failed to fulfill any obligation it has or has had under the Arkansas River Basin Compact (the

“Compact”) or which has been imposed on Arkansas by the Arkansas-Oklahoma Arkansas River Compact Commission. The plaintiff interposed objections on several unsound bases. The plaintiff asserted that the interrogatory is overbroad because it is not limited temporally or only to the IRW. Next it contended that the interrogatory is unduly burdensome, and finally, that it is not reasonably calculated to lead to the discovery of admissible evidence and the information sought is not relevant.

First, the interrogatory is relevant to at least three of the defenses Cal-Maine raised in its Answer to the FAC. Cal-Maine’s Fourth Defense recites the plaintiff’s failure to join a necessary party; its Seventh Defense expressly recites that the FAC is barred by the provisions of the Compact; and its Eighteenth Defense raises the defense of primary jurisdiction. These defenses clearly make the Compact an issue in this action. Because the Compact is an issue, the willingness of Arkansas to voluntarily fulfill obligations imposed on it by the Compact and the Commission is relevant.

The interrogatory is plainly calculated to lead to evidence regarding whether or not the Compact is an effective device for resolving any genuine issues regarding the quality of water flowing from Arkansas to Oklahoma. The open ended nature of the interrogatory regarding any failure of Arkansas on any body of water subject to the Compact, and at any time since the Compact was formed, is intentional and proper. The Compact was only established in 1970. Cal-Maine believes that Arkansas has fulfilled its obligations under the Compact for all bodies of water at all times. The interrogatory is not overbroad. If the plaintiff can show that Arkansas has not fulfilled an obligation regarding any river or stream, it can cast doubt on the effectiveness of the Compact remedy. The burdensomeness objection is equally weak. Oklahoma knows, without the need of conducting research, whether it believes Arkansas has failed to meet any obligation imposed on it by the Compact



or the Commission. Nothing about this is complicated. If Oklahoma can show that Arkansas is not a reliable participant in the Compact, it can say so and explain why. If Oklahoma knows that Arkansas has met its obligations under the Compact, Oklahoma should say so plainly as is requested in the interrogatory.

Production request 5 merely asks the plaintiff to produce documents that reflect any failure of Arkansas to meet its obligations under the Compact. If any such failure has occurred, the plaintiff should be able to easily produce materials that demonstrate the obligation and the failure. If it has no such documents it should simply reply that it has none. The issues of the Compact and compliance with the Compact are relevant to defenses raised by Cal-Maine. The plaintiff should be compelled to give candid answers to interrogatory 7 and production request 5.

iii. Interrogatories 8 and 9 and Production Requests 6 and 7

Interrogatory 8 asks the plaintiff whether, before this action was filed, it made, or attempted to make, any estimate, assessment, or quantification of any potential adverse social or financial consequences to family farmers who are contract growers for any of the defendants (interrogatory 8) or the economies of Oklahoma or Arkansas (interrogatory 9) if the plaintiff is successful in any aspect of this litigation. If the plaintiff did not make any such estimates, assessments, or quantifications the interrogatory asked the plaintiff to say so plainly.

The FAC asks for permanent injunctive relief. The plaintiff has put the defendants on notice that it intends to ask for preliminary injunctive relief prior to the time of trial. Issues regarding the relative harm to independent contract growers and the economies of Oklahoma and Arkansas are clearly important factors in any consideration of a request for injunctive relief. Any facts which the plaintiff may have regarding these issues are

discoverable. Significantly, the plaintiff has not made any objection on the basis of work product.

The plaintiff's objections are based on dubious assertions of vagueness and relevancy. There is nothing vague about the interrogatories. It is clear what is being sought. The relevancy objection reveals much about the plaintiff's mindset, but the objection is clearly not sustainable. The Tenth Circuit follows the general rule that any party requesting injunctive relief, either permanent or preliminary, must necessarily show that "the injunction, if issued, will not adversely affect the public interest." *See, Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 822 (10<sup>th</sup> Cir. 2007). It is indisputable that the interrogatory seeks information about a relevant topic. In the absence of a work product objection any factual development regarding the public interest implication of this action are discoverable. If the plaintiff has not made, or attempted, to make an inquiry regarding possible injury to the public interest the plaintiff should say so plainly as requested in the interrogatory.

Production requests 6 and 7 ask only for documents associated with any inquiry regarding the impact on independent contract growers or the state economies. Again, if such documents exist they are discoverable. If there has been no such inquiry, and if the plaintiff has no such documents, it should simply reply that it has none.

### C. Conclusion

The interrogatories submitted by Cal-Maine asked simple, direct questions. Interrogatories 1 and 2 asked questions to which the plaintiff should have known the answers before the FAC, with its allegations of violations of statutory law, was filed. Interrogatories 7, 8, and 9 posed questions of the sort a Court would rightly expect direct answers to if asked by the Court during oral argument. The plaintiff's responses to the interrogatories should have been straight-forward, and should have answered the questions

with unambiguous language. Instead the plaintiff responded with objections and an undifferentiated document dump. When Cal-Maine attempted to avoid this motion by writing a letter pointing out the deficiencies of the responses, the letter was ignored. A telephonic meet-and-confer was equally unproductive.

Cal-Maine is entitled to answers which are responsive to, and only to, its interrogatories. The same is true for its production requests. The plaintiff's position of ignoring the relevance of discovery to a defense that has been raised, and contending that it does not have to respond to a discovery request unless the request somehow fits into the plaintiff's theory of liability is arrogant, unworkable, and contrary to Rules 33 and 34. All delay in discovery responses by the plaintiff inures to the benefit of the plaintiff, and results in prejudice to Cal-Maine and its co-defendants. This Court should not countenance the sort of discovery avoidance being performed by the plaintiff. This Court should enter its order compelling the plaintiff to immediately give full and candid responses to the discovery which is the subject of this motion.

Dated: July 25, 2007

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of July, 2007, I electronically transmitted the foregoing document to the following:

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Dated: July 25, 2007

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